Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Examination of Current Policy	)	GC Docket No. 96-55
Concerning the Treatment of	)	
Confidential Information Submitted	)	
to the Commission	)	

OPPOSITION OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC), on behalf of Southwestern Bell Telephone Company, (SWBT), Pacific Bell (Pacific), and Nevada Bell (Nevada) (collectively, the SBC Companies), hereby opposes the Petition for Reconsideration filed by MCI WorldCom Inc. (MCI) on September 17, 1998, for the following reasons.

I. THE COMMISSION'S DECISION TO PERMIT THE TOTAL NONDISCLOSURE OF TARIFF COST SUPPORT DATA SHOULD NOT BE RECONSIDERED.

MCI confines its arguments to the portion of the order which allows tariff cost support information to be treated as confidential when a submitting party makes a qualifying showing under exemption 4. There is no reason for the Commission to reconsider this portion of its order.

MCI first argues that there should be no instance in which a party filing tariff cost support data under a request for confidential treatment should be allowed to obtain total confidentiality for such data. The order, however, does not provide any such automatic finding, but requires that the submitter include the supporting information required by Section 0.459(b) of the Commission's rules to obtain such treatment. Such requests are

publicly made, and can always be challenged by MCI. MCI provides no reason why the opportunity to file such a challenge does not satisfy any due process requirements.

MCI next claims that the Commission has "unbridled discretion" to grant total nondisclosure of tariff cost support information. While SBC agrees that standards to be promulgated and debated might be useful, such standards do not exist today in the Commission's rules and need not be created in this order. Thus, MCI provides no basis for reconsideration on this ground, but may propose a further rulemaking.

MCI claims that due process is especially offended when the order is applied in the context of Streamlined Tariff filings. MCI correctly notes that under no circumstances can a Section 208 complaint subject a carrier with a "deemed lawful" tariff to retroactive liability. MCI claims that since an order allowing a Streamlined Tariff to take effect allows that tariff to be deemed lawful, and not subject to damages until later possibly found to be unlawful, MCI's due process rights are particularly infringed.

On the contrary, even assuming that MCI has no initial access to the confidential cost support data filed for a tariff, if it has suspicions regarding the lawfulness of the tariff, it can certainly make those known to Commission Staff, in a proper filing. If the Staff agrees, it can suspend a tariff for a defined period in which the confidentiality and lawfulness issues can be fully debated. This process satisfies any MCI due process interest.

Further, these MCI arguments are apparently based on the assumption that MCI has a right to convince Staff in every case that proposed rates should be lowered. This concern is unwarranted.

The cost support at issue in the usual filing concerns underlying economic unit costs associated with a new service. A proposed "new" service, as stated in the Commission's LEC Price Cap Order, is likely a repriced version of an existing service. Thus, the introduction of a "new" service is not essential to any customer as a substitutable service likely already exists or is available from another provider. In essence, any "new" service offering represents a discretionary purchasing decision by the customer and the customer is not required to accept the new rates, terms and conditions, as implied by MCI.

Likewise, the decision to offer a new service is driven, in part, by the projected revenues, driven by the proposed rate, from the new service. In effect, the market controls. If the customer is not willing to pay the price for the service it does not buy the service. Similarly, without the proper revenue incentives the LEC will not offer the service.

To the extent MCI is not forced to buy a service, it has no due process interest (and suffers no damages) when a service is priced higher than MCI desires. MCI can simply continue purchasing the substitutable services.

II. THE PROCEDURES IN THE ORDER DO NOT VIOLATE THE POLICY GOALS OF THE PUBLIC TARIFFING REQUIREMENT.

MCI objects to the order's determination that a "preponderance of the evidence" test should be used to determine whether confidential treatment is warranted for tariff cost support material. MCI claims it should have a right to oppose such requests.

As stated by the order, MCI has the opportunity to view such information under the terms of the model protective order, and can certainly challenge any such request for

confidential treatment, as long as it acts promptly. The Commission has no discretion to extend the notice period dictated by the Telecommunications Act of 1996, although it can suspend and investigate a filing if justified. To the extent that MCI objects to the tight timeframes in which a tariff is to be reviewed, it should direct its concerns to Congress, not the Commission.

MCI claims that such pre-effective review procedures are important since "there is still almost no competition in any category of local service."[1] On the contrary, there is ample competition in numerous categories of local service, and MCI itself has assured the Commission that it will be an active competitor for local residential service in the near future.[2]

Further, MCI completely fails to acknowledge the active competition it has previously admitted (or provided itself) for SBC Company high capacity services. As detailed in CC Docket No. 95-140, MCI asked SWBT to provide competitive bids in response to two MCI requests for proposals (RFPs). In the end, MCI decided it did not need the SWBT services after all and obtained the service from another provider or self-provisioned it.[3]

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[1] MCI at p.14.

[2] "The Chairman of MCI Worldcom has assured me that his company will be offering local service to residential subscribers in multiple dwelling units in the near future." (Remarks Of Commissioner Susan Ness Before the Consumer Federation of America Utility Conference Washington, D.C., October 1, 1998 (as prepared for delivery).)

[3] Southwestern Bell Telephone Company, Trans. Nos. 2433 and 2449, CC Docket No. 95-140, Order Terminating Investigation, (FCC 95-476) (rel. Nov. 29, 1995) remanded on review, 100 F.3d 1004 (D.C. Cir. 1996).

III. THE COMMISSION NEED NOT FURTHER CLARIFY ITS FOIA REVIEW PROCEDURES AS MCI REQUESTS.

The remainder of the requests by MCI should be rejected. SBC is unaware of any particular problem encountered by MCI in the use of the current protective orders for tariff cost support, so SBC does not support any requirement to use a standing protective order.

MCI also claims that while a rejected request for confidential treatment is being appealed, MCI should have access to the materials. Such a disclosure, however, could effectively moot the appeal. For such a reason, the Commission's procedures have always allowed the status quo (of non-disclosure) to remain in place until all appeals are exhausted. Thus, MCI's suggestion for clarification in this regard should be rejected.

IV. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Petition for Reconsideration filed by MCI be denied.

Respectfully submitted,

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October 16, 1998

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing "Opposition of SBC Communications, Inc." in GC Docket Number 96-55 has been served on October 16, 1998 to the Parties of Record.

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October 16, 1998

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